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Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

NO. A-582

OWEN W. CRUMPACKER AND
INDIANA HARBOR BELT RAILROAD

Petitioner

-vs-

SAUL I. RUMAN AND
JOSEPH MANCUSO

Respondents

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

		PAGE
I.	PETITIONER MISSTATES THE QUESTIONS PRESERVED AND PRESENTED FOR REVIEW	1
II.	PETITIONER'S "STATEMENT OF THE CASE" FAILS TO COMPLY WITH SUPREME COURT RULE 23 AND 40(5) DUE TO THE INCLUSION OF IRRELEVANT, UNSUPPORTED AND FALSE STATEMENTS	10
III.	CONCLUSION	16

APPENDIX

NOTICE OF APPEAL A1

TABLE OF AUTHORITIES

	PAGE
CASES:	
In Re Woodmar Realty Co. 294 F.2d 785	13, 14
STATUTES:	
Supreme Court Rule 19(b)	8, 9, 16
Supreme Court Rule 23(4)	8
Supreme Court Rule 40(5)	14, 16

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I.

PETITIONER MISSTATES THE QUESTIONS PRESERVED AND PRESENTED FOR REVIEW

The issues presented for review were concisely stated by both the district court and the U. S. Court of Appeals. The issue before the district court was its authority to enforce, by way of civil contempt, its earlier order of September 12, 1974 which ordered petitioner to pay attorney's fees of One Hundred Twenty ($120.00) Dollars for the unwarranted delay caused by petitioner in commencing a settlement. (That September 12, 1974 order was not appealed from.) Thus, the only issue presented for review is the legality of the district court's January 16, 1975 order which held petitioner in civil contempt for failing to comply with the earlier order of September 12, 1974.

The district court judge precisely and continuously stated the action the court was taking:

> "At the conclusion of the hearing on September 12, 1974, this court imposed a sanction on defense counsel Owen W. Crumpacker in the amount of one hundred twenty dollars ($120)

which was to be paid to plaintiff's counsel. This was in remibursement for three hours of time which plaintiff's counsel had been required to expend needlessly and without reason by virtue of the conduct of the said Owen W. Crumpacker which was directly contradictory to representations made by the said Owen W. Crumpacker and plaintiff's counsel to this court during the trial of this cause. No appeal was ever taken from this court's order of September 12, 1974 imposing the sanction. However, defense counsel wilfully and deliberately failed and refused to comply with this court's order of September 12, 1974, and as a result thereof and following a full hearing on January 16, 1975, this court found defense counsel guilty of a civil contempt. This court further, on January 16, 1975, imposed an additional one hundred twenty dollars ($120) sanction against the said Owen W. Crumpacker by reason of three additional hours of time which plaintiff's counsel had been required to expend needlessly and without reason by virtue of the failure of Owen W. Crumpacker, Esq., to comply with this court's order of September 12, 1974. The findings and conclusions in support of the conclusion that defense counsel was in civil contempt of this court are con-

tained in the remarks made from the bench by the undersigned judge of this court on January 16, 1975. As a result of the sanction imposed on September 12, 1974 and the additional separate sanction imposed on January 16, 1975, defense counsel Owen W. Crumpacker is obligated, pursuant to the orders of this court, to pay to the clerk of the court for the use and benefit of plaintiff's counsel the total sum of two hundred forty dollars ($240).

"As previously noted, this court, on January 16, 1975, announced from the bench that Owen W. Crumpacker was in civil contempt of this court for his wilful and deliberate failure and refusal to comply with the order of this court, which order had never been appealed. This court concluded that by way of a remedial sanction to enforce compliance with this court's order, Owen W. Crumpacker should be suspended from the practice of law in the United States District Court for the Northern District of Indiana until he complies with the order of this court. This sanction is in no way intended as punishment since no criminal contempt is here involved, but is intended only to enforce compliance with an order of this court.

"Accordingly and pursuant to the conclusions announced

from the bench on January 16, 1975, this court finds Owen W. Crumpacker in civil contempt of this court for his 'wilful and deliberate failure and refusal to comply with an order' and of this court; and it is further the order of this court that Owen W. Crumpacker be and 'he is hereby suspended from the practice of law in the United States District Court for the Northern District of Indiana until the date upon which he shall pay to the clerk of this court for the use and benefit of plaintiff's counsel the sum of two hundred forty dollars ($240). The clerk of this court is directed to refuse to permit Owen W. Crumpacker or any employee or agent of Owen W. Crumpacker to enter appearance or file any action or pleading in the United States District Court for the Northern District of Indiana. And the clerk of this court is further ordered and directed to notify the deputy clerks in each of the divisional or area offices of this court to strike the name of Owen W. Crumpacker from any action in which he has appeared and to provide notice to the parties for whom he has appeared that his appearance has been stricken by order of court and that the parties for whom he has appeared have twenty (20) days in which to obtain new

counsel. Provided, however, that upon the request of Owen W. Crumpacker, Esq., made in open court on January 16, 1975, execution and implementation of this order of suspension is stayed pending appeal to and decision by the United States Court of Appeals for the Seventh Circuit. Provided further that in the event no appeal is taken as provided by law, then and in that event upon the expiration of the time provided for appeal and if there has been no compliance with the orders of this court, this order shall be executed and implemented immediately. Otherwise, execution and implementation of such order shall await the decision and mandate of the United States Court of Appeals for the Seventh Circuit.

"Entered this 17th day of January, 1975.

"/s/ Jesse E. Eschbach
"United States District Judge"

The United States Court of Appeals was also explicit in stating the issues presented for review:

> "The only issues on this appeal are whether the order of the District Court of January 16, 1975, was valid and whether the district judge erred in not disqualifying himself from

> hearing the question as to whether Appellant was in contempt of the Court's order of September 12, 1974. The latter order ordered Appellant to pay to Saul I. Ruman the sum of $120.00 for the latter's services rendered Plaintiff Mancuso in securing the payment of the money settlement theretofore agreed upon between Plaintiff Mancuso and Defendant Indiana Harbor Belt Railroad Company." (Petitioner's Brief, A2)

The petitioner attempts to raise issues surrounding the district court's September 12, 1974 order which found that petitioner had wilfully and unreasonably failed to effectuate a settlement of a civil case. As the Court of Appeals noted:

> "It is true that in Appellant's opening brief he raised many alleged issues on appeal. However, no appeal was taken from any order other than the one of January 17, 1975, so he cannot attack the earlier orders referred to in his alleged issues on appeal." (Petitioner's Brief, A3)

The fact remains, however, that petitioner did not appeal any order other

than the January 16, 1975 order which found him in contempt for failing to comply with earlier court orders. This fact is apparent from petitioner's Notice of Appeal which specifically limits review to the district court's January 16, 1975 order. (A. 1)

The petitioner claims numerous questions presented for review. Most of these alleged issues are attacks against the September 12, 1974 order which was not appealed. The only issue presented for review is whether the district court had the power to hold petitioner in civil contempt for deliberately failing to comply with an earlier court order.

The petitioner has completely failed to accurately state the issue presented for review. The reason for this is obvious--no one would dispute that a district court has the power to enforce its lawful orders through civil contempt. However, petitioner attempts to hide the obvious issues behind serious, unfounded claims that are neither supported by the record or not relevant to the district court's January 16, 1975 order.

Supreme Court Rule 23(4) states as follows:

> "The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition."

Petitioner's failure to concisely and adequately place before the Court the questions presented for review are alone grounds for denying the writ. As can be seen from petitioner's conduct throughout this litigation, this Court could not expect that any further briefing by petitioner before this Court would aid in clarifying and addressing the issue presented by this appeal.

Supreme Court Rule 19(b) states as follows:

> "(b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided

> an important question of federal law which has not been, but should be settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision."

The only issue presented by this appeal is whether the district court had the power to find petitioner in civil contempt for wilfully failing to obey an earlier court order.

That a district court has the power to enforce its orders through civil contempt is without question. This is a well settled principle of law. Further, the record in this case shows that the district court went out of its way to be fair and gave the petitioner every opportunity to comply with its order. Thus, in no way could the district court action be characterized as departing from the accepted and usual course of proceedings so as to bring this appeal within the ambit of Supreme Court Rule 19(b).

II.

PETITIONER'S "STATEMENT OF THE CASE" FAILS TO COMPLY WITH SUPREME COURT RULE 23 AND 40(5) DUE TO THE INCLUSION OF IRRELEVANT, UNSUPPORTED AND FALSE STATEMENTS

Petitioner includes in his "Statement of the Case" a scenario of facts regarding petitioner's claim that some fraud or perjury had occurred in the original civil action. Most of these alleged facts are not supported by any citation to the transcript. Those statements which are cited to the record refer to assertions made in argument by petitioner in the September 12, 1974 hearing. None of the "Statement of the Case" is supported by testimony. Rather, the "Statement of the Case" is wholly made up of petitioner's self-serving statements at the September 12, 1974 hearing where the district court found that petitioner had deliberately held up on settlement of the civil case without justification, and that the purported investigation by petitioner was in fact a sham designed to delay settlement. (Petitioner's Brief, A17)

More importantly, the "Statement of the Case" is only supported by citation to a transcript of a September 12, 1974 hearing where the district court found that petitioner had deliberately and without justification delayed settlement, and further ordered petitioner to pay $120.00 in attorney fees incurred by respondent. The September 12, 1974 order was never appealed. (A. 1) The petitioner was given several opportunities to present evidence which would justify the delay in settlement of the case. However, petitioner never presented any evidence.

Again, petitioner's "Statement of the Case" demonstrates petitioner's misstatement of the issues presented. Petitioner attempts to relitigate the September 12, 1974 decision of the district court despite the fact that the September 12, 1974 order was never appealed. Petitioner bases his entire "Statement of the Case" upon his own self-serving arguments made nearly five (5) months before the January 16, 1975 order of the district court. Petitioner's "Statement of the Case" is composed of slanderous attacks made against the re-

spondent and the respondent's client. Not only are these remarks slanderous, but they are completely irrelevant to the court's January 16, 1975 order which held petitioner in civil contempt for failure to obey an earlier order of September 12, 1974.

That petitioner would make unsupported claims of fraud and conspiracy against opposing attorney and judge is not surprising. Petitioner has repeatedly made such unsupported charges. As early as 1961, the United States Court of Appeals for the Seventh Circuit took notice of the manner in which petitioner practices law:

> "We have reviewed the record and the amended petition carefully and are convinced that the petition is so wanting in sufficient allegations of fact as to present not even token compliance with the provisions of Rule 9(b) which require a pleader averring fraud to state 'with particularity' the circumstances alleged to constitute fraud. F.R.C.P. 9(b), 28 U.S.C.A. This opinion might rest there and the judgment be affirmed without further discussion, were it not for the pervading impression gathered from this

> record that the removal petition constitutes an attempt by appellant's attorney, Mr. Crumpacker, to harass appellees in the continued performance of their official functions and a near-contemptuous abuse of the processes of a federal court." In Re Woodmar Realty Co. 294 F.2d 785, 786 (7th Cir., 1961) (emphasis supplied)

Later, in that same opinion, the United States Court of Appeals noted:

> "There is, however, more involved here than the time element, namely, a vituperous tendency of counsel to read some heinous motive into the acts of anyone who dares to oppose him and of every judge who rules adversely to him." In Re Woodmar Realty Co., supra at 792

and,

> "Because we are convinced that the record in this case presents a contemptible, if not contemptous, abuse of the legal processes of a federal court, we have dwelt at length upon a historical resume of the record facts as they have come to our attention. We did that advisedly in order that there may be no mistake that we are cognizant of the nature and severity

> of the question with which we deal. We find a sorid picture of the repeated use of ill-founded charges of fraud as a trial tactic which is foreign to established concepts of honest and ethical advocacy. We want it clearly understood that repetition of that practice as disclosed by this record will not be tolerated in the future." In Re Woodmar Realty Co., supra at 794-795 (emphasis supplied)

Finally, petitioner's "Statement of the Case" should be stricken due to the inclusion of numerous scandalous and impertinent material, all of which is unsupported by the record. (Supreme Court Rule 40(5)) A review of the record shows that whenever petitioner cites to the record it is not testimony which he is citing to, rather it was the petitioner's assertions in open court which were never substantiated by any testimony despite the fact that the district court gave the petitioner several opportunities to present evidence.

Petitioner also miscaptions the action by insisting in each pleading that the proper caption is Saul I. Ruman v.

Owen W. Crumpacker. This practice deliberately misstates the caption in the United States Court of Appeals caption which properly reads Joseph Mancuso v. Indiana Harbor Belt Railroad Co. Again, petitioner demonstrates that he will misuse the judicial process to pursue personal attacks. In short, petitioner is using the United States Supreme Court as a forum to make completely unsubstantiated attacks upon a district court judge, civil litigants, and members of the bar. The appropriate remedy is to strike such materials from the record.

III.

CONCLUSION

Petitioner's brief and petition fail to raise any issue requiring review by this Court pursuant to Supreme Court Rule 19(b). More importantly, petitioner has misused the appellate process by deliberately misstating the issues and facts presented in the appeal, and by including false, unsupported and slanderous remarks in his brief. Respondent requests that petitioner's Petition for Writ of Certiorari be denied, that petitioner's brief be stricken pursuant to Supreme Court Rule 40(5) as irrelevant and scandalous, and that costs be assessed against petitioner.

Respectfully submitted,

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lmb
71-196-B/H

APPENDIX

APPENDIX

IN THE

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF INDIANA

HAMMOND DIVISION

JOSEPH MANCUSO,	)	
	)	
Plaintiff	)	
	)	
vs.	)	CIVIL NO. 72 H 63(2)
	)	
INDIANA HARBOR BELT RAILROAD COMPANY,	)	
	)	
	)	
Defendant	)	

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Owen W. Crumpacker, Judgment-Defendant in the above-captioned cause, hereby appeals to the United States Court of Appeals For the Seventh Circuit from the Judgment and Order entered by the Hon. Jesse E.

Eschbach, Judge of the United States District Court for the Northern District of Indiana, Hammond Division, on January 16, 1975.

Dated this 28th day of February, 1975.

OWEN W. CRUMPACKER of Hammond, Indiana

BY: _____

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